

**Tri-State Generation and Transmission Association, Inc.
Decision of the Board of Directors re:
Delta Montrose Electric Association Complaint under Board Policy 316**

I. Procedural History and Nature of the Complaint

On May 30, 2018, Delta Montrose Electric Association (“DMEA”) filed a formal complaint (the “Complaint”) under Tri-State Generation and Transmission Association Inc. (“Tri-State”) Board Policy 316 (“BP 316”). In summary, the Complaint alleges that Tri-State staff has refused to provide DMEA with: (1) documents relating to Kit Carson Electric Association’s 2016 withdrawal from Tri-State (the “Kit Carson Information Dispute”); and (2) equitable terms for withdrawal from Tri-State (the “Withdrawal Dispute”).

Tri-State’s Board of Directors (the “Board”) determined to consider the Complaint itself. By letter dated June 15, 2018 (the “Chairman’s Letter”), the Chairman of the Board notified DMEA, all other Member Systems and Tri-State staff of the procedures that would govern the Board’s consideration of the Complaint. In response to the Chairman’s Letter, La Plata Electric Association (“La Plata”) provided timely notice of its intention to present argument on the Complaint. Letters in support of and in opposition to the Complaint were received from San Isabel Electric Association, Inc. (“San Isabel”), Wheat Belt Public Power District (“Wheat Belt”) and United Power, Inc. (“United”). Documentary evidence was submitted to the Board on behalf of DMEA, La Plata and Tri-State staff, along with the letters from San Isabel, Wheat Belt and United Power. The Board heard oral presentations from representatives of DMEA, La Plata and Tri-State Staff on July 10, 2018. Written statements of position were submitted by DMEA and Tri-State staff on July 25, 2018. On August 7, 2018, the Board deliberated on the issues raised in the Complaint.

II. Findings

1. DMEA’s Various Wholesale Power Contracts

Prior to 1992, DMEA was a member of Colorado-Ute Electric Association, Inc. (“Colorado-Ute”), a generation and transmission cooperative whose members included DMEA and other Colorado distribution cooperatives. As of 1992, DMEA and Colorado-Ute’s other members had contracts requiring them to purchase substantially all their electricity from Colorado-Ute through December 31, 2025.

In 1989, Colorado-Ute filed for protection from creditors under Chapter 11 of the United States Bankruptcy Code. Through the bankruptcy proceeding, DMEA and Colorado-Ute’s other members gained the flexibility to acquire their future wholesale power requirements from any available source, including purchases on the spot market. Three Colorado-Ute members signed long term purchase contracts with Public Service Company of Colorado. Colorado-Ute’s other members, including DMEA, elected instead to become members of Tri-State and to sign long term all requirements purchase contracts with Tri-State.

DMEA signed its first contract with Tri-State on March 27, 1992. This first contract took the form of an amendment to DMEA’s existing all requirements contract with Colorado-Ute. Under this contract, DMEA promised to purchase substantially all its wholesale electric requirements from Tri-State through December 31, 2025.

On November 1, 2001, DMEA and Tri-State entered into a new wholesale electric service contract. This contract remains in force today. Tri-State promised to sell and deliver to DMEA and DMEA agreed to purchase and receive from Tri-State "all electric capacity and electric energy which [DMEA] shall require for the operation of [DMEA's] system" through "December 31, 2040." In the contract, DMEA specially acknowledged and agreed that:

- Tri-State had financed and in the future may finance new generation and transmission facilities in whole or in part through loans;
- Tri-State's indebtedness is evidenced by certain notes and secured by certain mortgages on Tri-State's assets, which promissory notes and mortgages would be amended, supplemented or restated from time to time in the future;
- Payments due to Tri-State from DMEA under the contract will be pledged and assigned to Tri-State's creditors to secure Tri-State's loans;
- Tri-State and its lenders were relying on DMEA's contractual power purchase commitment to provide for the development of Tri-State's facilities, the development of a generation and transmission system to serve DMEA, and for Tri-State to undertake a long-term planning and power supply acquisition program;
- Tri-State's lenders would rely on DMEA's wholesale electric service contract to assure that Tri-State's borrowing would be repaid;
- DMEA would work with Tri-State during the term of the contract to meet electric utility market challenges in a competitive environment; and
- The failure or threatened failure of DMEA to comply with its obligations under the contract will cause irreparable injury to Tri-State.

2. Tri-State's Reliance on DMEA's Contractual Promises

On an annual basis since 1992, DMEA has submitted to Tri-State a forecast of its future electricity requirements. Because Tri-State is bound contractually to meet DMEA's wholesale power requirements through the year 2040, Tri-State staff has used DMEA's long term power forecasts to plan, construct and maintain a generation and transmission system. Based upon the power forecasts of DMEA and other Tri-State members, Tri-State since 1992 has made large investments in generation and transmission assets and has incurred debt to finance these expenditures.

3. Historical Member Withdrawals from Tri-State

Over the past fifty years, several members have sought to withdraw from Tri-State, each under unique facts and circumstances.

a. Shoshone / Garland

In 1985, Shoshone River Power, Inc. (“Shoshone”) and Garland Power & Light Co. (“Garland”) entered into contracts to sell their distribution system assets to Pacific Power & Light Co. (“Pacific”). At the time, Shoshone and Garland had all requirements wholesale power contracts with Tri-State extending an additional thirty-five years. Shoshone and Garland advised Tri-State that once they had sold their assets to Pacific, they would no longer have any wholesale electrical requirements and therefore would purchase no additional power from Tri-State.

Tri-State filed suit to enjoin the asset sales. Ultimately, Shoshone was able to convey its assets to Pacific during a short gap in court-imposed injunctions. The federal courts ultimately enjoined the Garland transaction from closing, and Garland abandoned its proposed asset sale. Because Shoshone’s assets had been transferred to Pacific, enjoining the transaction was not possible. Tri-State therefore sued both Shoshone and Pacific for money damages. Tri-State prevailed at trial and in two different appeals. Tri-State’s damages were computed based upon what has become known as the “Shoshone Method.” Under this method, an estimate is made of the present value of the revenue a departing Tri-State member would have paid to Tri-State through the remaining term of its contract, less the present value of costs Tri-State might reasonably avoid if the member were to withdraw, and less the present value of any incremental revenue Tri-State might reasonably expect to receive from any Tri-State assets presently used to serve the departing member. Ultimately, a substantial money damage judgment was entered in favor of Tri-State, and the Shoshone litigation was settled on financial terms extremely favorable to Tri-State.

b. Sheridan-Johnson

In June of 1996, Tri-State’s board specified equitable terms and conditions for its member, Sheridan-Johnson Rural Electrification Association (“Sheridan-Johnson”), to withdraw. To achieve operational efficiencies, Sheridan-Johnson proposed to merge with Tri-County Electric Association (“Tri-County”), a neighboring distribution cooperative that was a member of Basin Electric Power Cooperative (“Basin”). Tri-County was to be the surviving entity and would continue to purchase all its electric requirements from Basin. To make Tri-State financially whole for the loss of Sheridan-Johnson’s load, Basin committed to purchase from Tri-State (at Tri-State Class A member rates) all the electricity Sheridan-Johnson would have purchased from Tri-State during the remaining term of Sheridan-Johnson’s all requirements contract with Tri-State. Upon the effective date of the Basin purchase contract, Sheridan-Johnson’s contract with Tri-State was discharged and its membership rights in Tri-State terminated, except only the future repayment of certain capital credits.

c. DMEA’s 2007 Indicative Buyout Amount

In response to various member inquiries, Tri-State staff in March of 2007 determined a buyout amount for each Tri-State member utilizing the Shoshone Method. Staff first calculated each member’s 2006 contribution to Tri-State’s fixed costs, *i.e.*, the member’s 2006 wholesale power purchases minus the avoidable costs associated with those purchases (fuel, purchased power, wheeling and dispatch costs). The resulting 2006 loss to Tri-State was assumed to remain constant for each remaining year of the member’s all requirements power contract. Losses for all remaining years of the member’s contract were then discounted to present value using Tri-State’s estimated weighted average cost of capital. The resulting net present value loss represented the amount a member should be required to pay to satisfy its contractual obligations to Tri-State. Using this methodology, an indicative “buyout” amount was computed and provided to each member. The indicative buyout number for DMEA was \$189,702,000 and was communicated to DMEA by letter dated March 22, 2007.

d. NPSIG

In April of 2009, five Nebraska members (the “NPSIG Members”) sought to withdraw from Tri-State. A committee of Tri-State’s board was appointed to study the NPSIG Members’ request. Ultimately, the committee recommended that the Board prescribe certain terms and conditions for the NPSIG Members’ withdrawal. In September of 2009, the Board approved the committee’s recommendation and established equitable terms and conditions for the NPSIG Members’ withdrawal. Among other requirements, the Board required the NPSIG Members to make the following payments to Tri-State, calculated using the Shoshone Method:

Chimney Rock Public Power District	\$21,285,000
Midwest Electric Cooperative Corporation	101,028,000
Northwest Rural Public Power District	33,536,000
Panhandle Rural Electric Membership Association, Inc.	38,752,000
Roosevelt Public Power District	25,176,000

Alleging (as DMEA does in the Complaint) that the buyout numbers computed by Tri-State staff were unfair, the NPSIG Members sued, asserting (among other claims) that Tri-State had breached Section 3(a) of the bylaws by failing to prescribe equitable terms and conditions for the NPSIG Members to withdraw. One NPSIG Member abandoned its lawsuit, but the other four pursued their claims to judgment. Based upon a jury verdict in Tri-State’s favor on every disputed issue, the court dismissed NPSIG’s lawsuit, finding that Tri-State had not breached section 3(a) of the bylaws. After their lawsuit was dismissed, the NPSIG Members abandoned their attempt to withdraw from Tri-State and remain as members today.

e. Tri-State’s 2014 Contract Committee

In 2014, a Contract Committee which comprised one representative from each Member was appointed to review Tri-State’s Wholesale Electric Service Contract with its Member Systems and to consider possible approaches to future withdrawal requests. Two external consultants were retained to review potential methodologies for future member withdrawals. Three methodologies were studied: the Shoshone Method; the Soyland Method and the so-called “Mark to Market” Method. The Committee also considered suggestions that it recommend a straight formula to apply to all future withdrawals. Ultimately, the Contract Committee recommended that the Board adopt the Mark to Market as the presumptive methodology to be used to compute buyout numbers for Tri-State members who propose to withdraw. The Board accepted the Contract Committee’s recommendation.

The Mark to Market Method is similar conceptually to the Shoshone Method, but with several differences. The Shoshone Method assumes static financial statements through the end of the departing member’s contract term, and essentially computes the net present value of the withdrawing member’s annual contribution to Tri-State’s fixed costs. By contrast, Mark to Market does not assume static Tri-State Class A Member rates or wholesale market prices throughout the departing member’s remaining contract term. Instead, Mark to Market uses Tri-State’s Long Term Financial Forecast (“LTFF”) for Tri-State’s Class A Member Rate through the remaining term of the departing member’s contract term, and it estimates the market price of wholesale power during that same period using external market data. A buyout calculation under Mark to Market is therefore a unique calculation based upon a snapshot in time and is somewhat less formulaic than the Shoshone Method. In simple terms, Mark to Market computes the net present value of the LTFF Class A Rate forecast minus the market rate forecast, multiplied times the withdrawing member’s load forecast. Additional

adjustments are made to take account of transmission costs, patronage capital, the value of expiring Board Policy 115 and 117 contracts and other factors.

Because it assumes that power Tri-State would have sold to the departing member would instead be sold into the wholesale market at varying prices over time, a Mark to Market calculation depends upon assumptions concerning future Class A Member rates and future wholesale market prices. When market prices are high, Tri-State members have little incentive to withdraw and the Mark to Market Method will result in a relatively lower buyout number. But when market prices are low (as they are presently), members have a greater incentive to avoid their Tri-State contracts and Mark to Market will result in a relatively higher buyout number. The larger the differential between the assumed future Class A Rate and the assumed wholesale market rate, the larger the buyout amount will be under Mark to Market.

f. Kit Carson

In 2014, Kit Carson Electric Cooperative (“KCEC”) expressed its desire to withdraw from Tri-State, and it asked Tri-State for a buyout number that would satisfy KCEC’s wholesale electric service contract obligations to Tri-State. Per the Board’s direction, Tri-State staff negotiated a buyout number for Kit Carson using the Mark to Market Method. Information was exchanged between Tri-State and KCEC staff and because much of this information was confidential, Tri-State and KCEC executed a non-disclosure agreement that obligated each side to preserve the confidentiality of all information received from the other. Ultimately, staff for KCEC and Tri-State reached agreement on the terms and conditions under which KCEC could withdraw from Tri-State subject to the approval of their respective Boards. The Board approved those terms and conditions in June of 2016.

4. *DMEA’s Withdrawal and KCEC Information Requests*

In late November of 2016, DMEA’s board authorized its staff to negotiate terms and conditions under which DMEA could withdraw from Tri-State. In January of 2017 and again in August of 2017, DMEA submitted to Tri-State comprehensive information requests that DMEA claims is necessary to compute an appropriate buyout number. In April of 2018, DMEA submitted another information request to Tri-State seeking comprehensive information about the terms and conditions under which KCEC withdrew from Tri-State, including all assumptions and backup information regarding KCEC’s buyout. In support of this request, DMEA provided a letter from KCEC’s attorney authorizing Tri-State to release some of this information to DMEA.

Tri-State staff computed buyout numbers for DMEA using both the Shoshone Method and the Mark to Market Method. During the course of negotiations, Tri-State staff provided DMEA with all information concerning Tri-State’s buyout calculations, including the buyout numbers themselves and key variables used in the Mark to Market calculation such as the amount of Class A Revenue assumed to be lost each year (demand and energy; the amount of market revenue received (dollars per Megawatt hour per year); credit for avoided transmission costs, including Tri-State’s assumed Open Access Transmission Tariff; credit for capital credits; credit for benefits to Tri-State from re-dispatch of power; book value of stranded transmission, and the discount and inflation rates used in Tri-State’s computation. DMEA conceded during the Policy 316 hearing that the information provided has allowed DMEA to essentially replicate Tri-State’s buyout numbers as computed under the Mark to Market Method.

Although Tri-State staff provided much of the information DMEA has requested, it declined to provide confidential information concerning KCEC's withdrawal, particularly the financial information underlying the assumptions made in connection with KCEC's buyout calculations. Tri-State staff explained that it does not disclose one Member System's confidential information to another Member System, regardless of whether such information is subject to a confidentiality agreement. Further, Tri-State staff acknowledged that KCEC had authorized Tri-State to release certain information (subject to certain conditions) to DMEA. However, staff considers the information DMEA has requested to be confidential and staff refused to waive any of Tri-State's rights under the confidentiality agreement with KCEC.

5. Tri-State's Bylaws

Article I, Section 3(a) of Tri-State's bylaws specifies the only way a Member System can withdraw:

A member may withdraw from membership upon compliance with such equitable terms and conditions as the Board of Directors may prescribe provided, however, that no member shall be permitted to withdraw until it has met all its contractual obligations to [Tri-State].

III. Conclusions

a. The Information Dispute

i. KCEC Buyout Information

Through the Complaint, DMEA asks the Board to require Tri-State staff to provide DMEA with virtually all documents or other information concerning KCEC's withdrawal from Tri-State. Among other things, DMEA has demanded that Tri-State staff provide:

- “all information provided by or on behalf of [KCEC] to Tri-State and that is relevant to the terms and conditions Tri-State and [KCEC] negotiated in connection with [KCEC's] withdrawal from Tri-State;
- “the information and any underlying models (e.g., spreadsheet or similar matrix) used to calculate the mark-to-market buyout methodology used in [KCEC's] withdrawal from Tri-State;
- “all other relevant inputs, assumptions or data used in calculating the amount paid by [KCEC] in connection with its withdrawal from Tri-State; and
- “all outputs (including modeling outputs and those outputs shared with [KCEC] relevant to calculating the amount paid by [KCEC] in connection with its withdrawal from Tri-State.”

Tri-State staff properly declined to provide this information. First, the information is confidential to both KCEC and Tri-State. In the context of DMEA's desire to leave Tri-State, DMEA's financial interests are adverse to the interests of Tri-State and the remaining members. That is because every dollar less DMEA pays to "buy out" of its contract is a dollar that otherwise would be received by Tri-State for the benefit of all remaining members. Viewing DMEA's request in this light makes it clear that DMEA's request for the KCEC information is not reasonable. While negotiating against the interests of Tri-State, DMEA asks the Board to require Tri-State staff to surrender its confidential negotiating information. Such a request is unreasonable under the circumstances.

Also, providing volumes of calculations and information about KCEC's withdrawal will be a burdensome exercise that, at best, will only distract the parties by focusing on a transaction that has little or no relevance to DMEA's proposed withdrawal from Tri-State. The Mark to Market Method creates a buyout number based upon a unique set of circumstances that exists at a point in time. In the case of KCEC's withdrawal, those circumstances have long since passed and are quite different from those presented by DMEA's proposed withdrawal.

ii. DMEA Buyout Calculations

DMEA has also demanded that Tri-State staff provide "[t]he underlying model (e.g. spreadsheet or similar matrix) used to calculate the 'Mark to Market' buyout methodology used in Tri-State's January 11, 2017 DMEA withdrawal discussions." However, substantially all the inputs necessary for DMEA to replicate the buyout calculation has been provided to DMEA. Moreover, DMEA's Mr. Bronec conceded that with the information Tri-State has provided, DMEA has "more or less" been able to replicate the buyout number Tri-State has provided. Under these circumstances, there is no reason for DMEA to demand that Tri-State's own spreadsheet and other work product be turned over to DMEA.

In conclusion, the Board finds that DMEA's various information requests are unreasonable and should be denied.

b. The Withdrawal Dispute

DMEA asks the Board to "direct TSGT management to negotiate terms of a fair and equitable withdrawal."

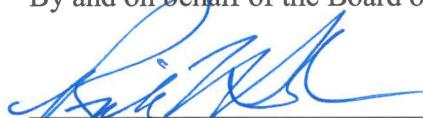
As the Board understands Section 3(a) of Tri-State's bylaws, it may but need not prescribe equitable terms and conditions for DMEA to withdraw from Tri-State. If the Board does decide to prescribe equitable terms and conditions for DMEA to withdraw, the Board must require the member to meet all its contractual obligations to Tri-State. Therefore, the threshold question the Board must decide is whether to provide equitable terms and conditions for DMEA to withdraw. Only if the Board answers this question in the affirmative must it comply with the Section 3(a) requirement that DMEA "shall [not] be permitted to withdraw until it has met all its contractual obligations to [Tri-State]."

In the present case, DMEA can withdraw as a Tri-State member while continuing to honor its power purchase contract through December 31, 2040. As between DMEA and the remaining Tri-State members, this would avoid any reallocation of the financial risk to which the parties agreed when the contract was signed. The Board therefore directs Tri-State staff to negotiate equitable terms and conditions for DMEA to withdraw from Tri-State, while continuing to honor all of its contractual obligations to Tri-State.

Under bylaw Section 3(a), the Board also has discretion to specify withdrawal terms for DMEA that include a contract buyout. Because any buyout number will inevitably be based upon assumptions that are to some extent speculative, the Board agrees with Tri-State staff that the risk of such assumptions proving to be wrong should be borne by DMEA and not by the remaining Tri-State members.

For these reasons, the Board directs Tri-State staff to recommend equitable terms and conditions under which DMEA may withdraw as a member of Tri-State. Such terms and conditions should allow DMEA to withdraw from membership while continuing to honor its wholesale electric service contract with Tri-State. Staff may (but need not) alternatively provide for a buyout and a complete discharge of DMEA's wholesale electric service contract. If Tri-State staff does recommend a buyout of DMEA's contract, assumptions upon which the buyout number are based should be equitable while resolving all reasonable doubts in a manner designed to protect the financial interests of remaining Tri-State members.

By and on behalf of the Board of Directors



Rick Gordon, President and Chairman

Dated: August 23, 2018